UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ROBERT P. HANAHAN,	:
Plaintiff,	:
	:
-vs-	: Civ. No. 3:01cv593 (PCD)
	:
CHASE MANHATTAN BANK f/k/a CHEMICAL BANK,	:
Defendant.	:

RULINGS ON PLAINTIFF-INTERVENOR'S MOTION FOR SUMMARY JUDGMENT AND DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Plaintiff-intervenor, State of Connecticut Department of Social Services ("DSS") and defendant cross-move for summary judgment. For the reasons set forth herein, plaintiff-intervenor's motion is **denied** and defendant's motion is **granted**.

I. BACKGROUND

Plaintiff is the conservator of the estate of John Livingston having been appointed such by the order of the Probate Court for the Judicial District of Waterbury on February 9, 2001. John Livingston, the ward of plaintiff, is the beneficiary of his mother's trust dated July 31, 1947 entitled "Marion La Bau Dickerman, as Grantor and E. Lisk Wycoff, Jr. and Chemical Bank as Trustees." The trust was amended from time to time during Mrs. Dickerman's lifetime, the final indenture to which was dated February 2, 1987. The indenture provided that one-half of the balance of the trust if her husband survived her, or the entire trust should he not survive her, be distributed as follows:

> If the Grantor's son, JOHN MORGAN LIVINGSTON, is then living, one-fourth (1/4) of such balance of the trust estate shall be held by the Trustees, as a separate trust, to pay so much or all of the net income to the Grantor's son during his life as the Trustees shall at any time or from time to time, in their sole and absolute discretion, deem advisable and to accumulate and add to principal any income not so paid. In addition,

> the Trustees may pay so much of the principal to the Grantor's said son as the Trustees may at any time or from time to time, in their sole and absolute discretion, deem necessary for his health, support or maintenance. Upor the death of the Grantor's son, the Trustees shall pay and distribute any remaining principal of this trust in equal shares to the then living issue of the Grantor's son, per stirpes, provided, however, that if upon the termination of this trust any property would otherwise vest free of trust in any person for whom another trust is then held hereunder, then said property shall instead be added to and administered and disposed of upon the same terms as said other trust.
>
> The income or principal of this trust shall not be capable of alienation, anticipation or assignment; nor shall any such income be subject to any creditors' claims.

Livingston is presently confined to the Rosewood Health and Rehabilitation Center since May 10, 2001, where he receives full-time care for Alzheimer's dementia, bipolar disorder and Parkinson's disease. He has received social security disability benefits for over twenty years due to his inability to hold steady employment. Livingston received payments of $500 per month from his mother for at least ten years prior to her death on January 9, 2000. At the time of his mother's death, both she and the trustees understood that Livingston was living in The Elton, a residential facility, the cost of which was borne by Connecticut's Medicaid program. The trustees discontinued payments to Livingston when informed that any payments would be turned over to the nursing home and used to offset Medicaid payments. The trustees have made payments to Livingston to provide for clothing, a walker, and legal services required to appoint a conservator.[1]

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[1] Plaintiff argues that defendant's motion for summary judgment should be denied for failure to annex a Local Rule 9(c)(1) statement. Defendant has since annexed the statement, to which plaintiff has responded. On this basis alone, and in the absence of prejudice to plaintiff for the technical non-compliance, little would be gained by denying defendant's motion only to have it refiled in compliance with D. CONN. L. R. 9(c). *See Foman v. Davis*, 371 U.S. 178, 181, 83 S. Ct. 227, 9 L. Ed. 2d 222 (1962) (" It is too late in the day and entirely contrary to the spirit of the Federal Rules of Civil Procedure for decisions on the merits to be avoided on the basis of such mere technicalities."). Defendant's submission is therefore deemed acceptable, and its motion will be considered on the merit.

II. STANDARD

A party moving for summary judgment must establish that there are no genuine issues of material fact in dispute and that it is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). In determining whether a genuine issue has been raised, all ambiguities are resolved and all reasonable inferences are drawn against the moving party. *United States v. Diebold, Inc.*, 369 U.S. 654, 655, 82 S. Ct. 993, 8 L. Ed. 2d 176 (1962); *Quinn v. Syracuse Model Neighborhood Corp.*, 613 F.2d 438, 445 (2d Cir. 1980). Summary judgment is proper when reasonable minds could not differ as to the import of evidence. *Bryant v. Maffucci*, 923 F.2d 979, 982 (2d Cir. 1991). "[W]hen both parties move for summary judgment, asserting the absence of any genuine issues of material fact, a court need not enter judgment for either party. . . . Rather, each party's motion must be examined on its own merits, and in each case all reasonable inferences must be drawn against the party whose motion is under consideration." *Morales v. Quintel Entm't, Inc.*, 249 F.3d 115, 121 (2d Cir. 2001).

III. DISCUSSION[2]

Defendant argues that the testator's intent, with full knowledge of John Livingston's circumstances, was not to terminate her son's eligibility for Medicaid benefits, and, requiring the trustees to pay for his care would contravene her intent in creating the trust. Plaintiff-intervenor

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[2] Federal courts exercising diversity jurisdiction employ the choice-of-law of the forum state. *See Celle v. Filipino Reporter Enterprises Inc.*, 209 F.3d 163, 175 (2d Cir. 2000). In the present case, the indenture provides that "This Trust shall be construed and regulated in accordance with the laws of the State of New York." Such a choice of law provision obviates the need to engage in a choice of law analysis as New York law is the applicable law. *See Reichold Chemicals, Inc. v. Hartford Accident & Indemnity Co.*, 252 Conn. 774, 781, 750 A.2d 1051 (2000).

responds that such an intent is not evident and further that N.Y. EST. POWERS & TRUSTS § 7-1.6(b) is dispositive as to whether the principal should be distributed and requires the trustees to invade the trust corpus to pay for his medical care, and the failure to do so constitutes an abuse of discretion.

A. Interpretation of the Trust

The standard for interpreting trusts is well-established. "[T]he trust instrument is to be construed as written and the settlor's intention determined solely from the unambiguous language of the instrument itself." *Mercury Bay Boating Club Inc. v. San Diego Yacht Club*, 76 N.Y.2d 256, 267, 557 N.E.2d 87, 557 N.Y.S.2d 851 (1990). "[R]ules of construction are to be disregarded where the decedent's intention is clearly or sufficiently manifest, or where the language of the instrument is plain and its meaning obvious." *In re Bisconti's Will*, 306 N.Y. 442, 445, 119 N.E.2d 34 (1959). "The judicial interpretive function is to find the meaning of the testator as expressed in the language used, considered in the light of the attendant circumstances, and effectuate it." *In re Nichols*, 24 A.D.2d 191, 197, 264 N.Y.S.2d 787 (1965) (internal quotation marks omitted).

The relevant language of the trust provides that the trustees may, "in their sole and absolute discretion," "pay so much or all of the net income . . . as the Trustees shall . . . deem advisable" and furthermore may "pay so much of the principal . . . as [they] . . . deem necessary for [Livingston's] health, support or maintenance." It is undisputed that Livingston was receiving Social Security benefits at the time the relevant indenture was signed. It is further undisputed that Livingston's mother, the testator, paid no more than $500 per month to Livingston up to the time of her death. The trust further established a remainder interest in "issue of the Grantor's son" or in those beneficiaries of other trusts

by which the residue could be disposed. Finally, the trust provided that neither the income nor principal may be subject to "alienation, anticipation, . . . assignment . . . [or] creditors' claims."

In light of the above, it is unlikely that the grantor intended to fund Livingston's medical care. Her payments to him, equating to $6,000 per year, are only a fraction of the roughly $5,100 per month required to house him. As she did not fund her son's nursing home stay in life, there is no indication of an intent, under the attendant circumstances at the time the instrument was signed, to require that such stay be funded after her death. *See id.* Defendant was receiving disability benefits at the time the indenture was signed, and the testator was aware of his reliance on Medicaid at the time of her death and did not amend the provisions of the trust. The testator was under no obligation to provide for his support. *See Maul v. Fitzgerald*, 78 A.D.2d 706, 708, 432 N.Y.S.2d 282 (1980) ("There is no authority to justify impressing on a testamentary trust a greater obligation than the testator himself would have, if he were alive "). Nothing has changed to indicate that the trustees' decision not to fund his medical care is contrary to the testator's intent.

> If the testator were aware of these facts as they now exist, it would be a divorce from the reality of life to presume that he would intend the amount of the trust to be paid to the petitioner in preference to having society share the burden . . . , especially since the testator, if living, would have no obligation to support the beneficiary, an adult child.

Maul v. Fitzgerald, 78 A.D.2d at 708 (citations omitted).

The trust further provides for remaindermen. An order requiring the trustees to fund Livingston's stay in the nursing home would deplete the trust to the detriment of the interests of the remainderman. It follows that

> the rigidity of any possible public policy requiring an invasion of trust corpus to relieve the burdens of a publicly funded program is subject to dilution, if it extends at all, in situations where the expenditure involved is the current astronomical cost of institutional

> care where the application of the total corpus to these charges would summarily render meaningless, a testamentary scheme, carefully designed to carry out an intent to retain some portion of a trust corpus for the ongoing needs of the life beneficiary, with a remainder for the benefit of other surviving issue.

See In re Escher, 94 Misc.2d 952, 961, 407 N.Y.S.2d 106 (1978). It is further likely, given the spendthrift clause, that the testator did not intend for Livingston's present circumstances to eviscerate the corpus of the trust.[3]

The Trustees' action thus comport with the testator's intent. Their reliance on State aid to the beneficiary to cover his medical expenses is consistent with New York law.

> The law is now well settled that when a trustee is authorized by the governing instrument to invade principal for the income beneficiary's maintenance or emergency needs, the court will not compel the trustee to exercise such discretion to pay expenses which would otherwise be paid by governmental funds.

In re Will of Surut, 141 Misc.2d 1005, 1006, 535 N.Y.S.2d 922 (Sur. 1988).[4]

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[3] Plaintiff-intervenor argues that "if the purpose for the trust is for her son's health, it is not evident that her wishes are being implemented when his care is being rendered by a facility subsidized by the State of Connecticut." Pl.'s Br. @ 11. Such is unlikely given the fact that Livingston was a ward of the State for years prior to the signing of the indenture. This argument ignores the fact that knowing that the beneficiary was not bereft of support, i.e., by social security and Medicaid, the testator nonetheless manifested no intent to relieve the State of its Medicaid obligation.

[4] It is noted that New York law was not always so. *See In re Crow's Will*, 56 Misc. 2d 398, 401, 288 N.Y.S.2d 965 (1968) ("for this court to hold that the trustees could withhold here in their discretion would be to say that the testator intended his mother to become a public charge. It is not proper to say that the deceased wanted the benevolence of the state to be used as the instrument for the preservation of a present or remainder interest in a trust."); *In re van Gaalen's Estate*, 38 Misc. 2d 853, 855, 239 N.Y.S.2d 312 (Sur. 1963) ("Charity bestowed by the state or any local political subdivision thereof to alleviate the suffering of the destitute is a grant or gift by an enlightened government that seeks to keep its less fortunate citizens from deprivation and want."). These decisions predated *Goldberg v. Kelly*, 397 U.S. 254, 262 n.8, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970) ("It may be realistic today to regard welfare entitlements as more like 'property' than a 'gratuity.'"), and *Tucker v. Toia*, 43 N.Y.2d 1, 7, 371 N.E.2d 449, 400 N.Y.S.2d 728 (1977) (" the provision for assistance to the needy is not a matter of legislative grace; rather, it is specifically mandated by our Constitution"). But whatever the reason for the change in New York law, it is likely that any decision predicated on the proposition that State benefits are a privilege rather a right is antiquated law.

The exercise of discretionary power by trustees will not be disturbed unless there is evidence the decision to exercise or not exercise that discretion is unreasonable or not made in good faith. *See In re Cmty. Serv. Soc'y of N.Y.*, 275 A.D.2d 171, 181, 713 N.Y.S.2d 712 (2000). As plaintiff-intervenor has produced no evidence that the beneficiary's needs are not being provided for, although the support is derived from State funds, there is no basis on which to conclude that the trustees abused their discretion in not relieving that source. *See In re Roberts*, 61 N.Y.2d 782, 461 N.E.2d 300, 473 N.Y.S.2d 163 (1984) (finding trustees did not abuse discretion by refusing to pay for hospitalization when grantor, knowing of her daughter's disability, made no amendment of the trust and provided for remaindermen); *In re Gross*, 52 N.Y.2d 1006, 420 N.E.2d 91, 438 N.Y.S.2d 293 (1981) (finding that trustee was not required to invade the corpus of the trust to reimburse the Department of Mental Hygiene for costs incurred in caring for the life beneficiary when corpus was to be invaded for emergencies and routine expenses were to be paid out of trust income). There is thus no evident abuse of discretion by the trustees in declining to fund Livingston's medical expenses that would otherwise be covered by Medicaid.

B. N.Y. EST. POWERS & TRUSTS § 7-1.6(b)

Plaintiff-intervenor argues that, notwithstanding the testator's intent to the contrary, N.Y. EST. POWERS & TRUSTS § 7-1.6(b) requires judicial intervention and an order requiring the trustees to compensate the State for Livingston's medical care. Defendant responds that such is not the case.

The relevant statute, § 7-1.6(b), provides that

> Notwithstanding any contrary provision of law, the court having jurisdiction of an express trust, hereafter created or declared, to receive income from property and apply it to the use of or pay it to any person, unless otherwise provided in the disposing instrument, may in its discretion make an allowance from principal to any income

> beneficiary whose support or education is not sufficiently provided for, whether or not such person is entitled to the principal of the trust or any part thereof; provided that the court, after a hearing on notice to all those beneficially interested in the trust in such manner as the court may direct, is satisfied that the original purpose of the creator of the trust cannot be carried out and that such allowance effectuates the intention of the creator.

Section 7-1.6 represents "the legislature's clear intent to liberalize the circumstances under which principal may be applied for the support of a needy income beneficiary . . . [to overcome historical precedent in which] a court could not order an invasion of principal [n]o matter how dire the need and how inhumane the result of the inability to invade." *In re Estate of Bross*, 167 Misc. 2d 37, 39, 636 N.Y.S.2d 987 (Sur. 1995).

The linchpin of resort to § 7-1.6(b) and the judicial intervention authorized thereby is that the beneficiary's needs are not met unless the trust principal is invaded. There is no indication, in the express language of the statute or cases interpreting the same, that the statute was established to facilitate government collection of Medicaid benefits paid. The statute, by its express terms, provides for judicial intervention only when a beneficiary's support or education is not adequately provided for by the trust income. It is, in fact, in derogation of the common law of trusts in New York, but not to the extent propounded by plaintiff-intervenor.

There is no precedent to suggest that the result proposed by plaintiff-intervenor is consistent with the statute. It is not apparent that Livingston is "needy" as his care is presently provided for by State benefits. The fact that a trust has been established does not translate to a potential windfall for the State in the form of recoupment of losses that it would not otherwise have recouped but for the existence of a trust. Nor is it evident that the statute is a vehicle by which the State may force the "dead hand" of one who otherwise had no obligation to the beneficiary in contravention of her wishes.

The occasions on which the statute has effectively been employed present factual circumstance dramatically different than the present case. For example, when income beneficiaries were unable to cover fixed expenses with the combined income of the trust and social security benefits, their circumstances justified the trustees' invasion of a trust established sixty-one years prior based on a change of circumstances since the creation of the trust. *See In re Rosoff*, 170 Misc. 2d 1029, 1030, 1031, 653 N.Y.S.2d 227 (Sur. 1996). Similarly, such an invasion was permitted when required aid was not provided as part of the care at a nursing home and the fixed income distribution from the trust was established prior to a substantial deterioration in a beneficiary's health requiring twenty-four hour nursing care. *See In re Estate of Bross*, 167 Misc. 2d at 40-41. However, in cases where the intent of the trust was not to provide care for an income beneficiary but rather was to supplement State aid, no invasion of principal would be permitted notwithstanding a denial of Medicaid benefits because of the existence of the trust. *See In re Penn Yan Manor Nursing Home, Inc.*, 96 Misc. 2d 463, 467-68, 409 N.Y.S.2d 201 (Sur. 1978).

As the above examples indicate, there may be occasions when a court order in necessary to account for changes of circumstances. Courts have declined the opportunity to invoke such authority in deference to

> (1) the testamentary nature of the trust and the heightened sensitivity typically accorded the intent of the testator in that context . . . , (2) the fact that the testator would ordinarily have had no obligation to otherwise support the income beneficiary at the time the application for assistance is made . . . , and (3) the related inference that the testator, in conformity with contemporary perceptions of assistance as a type of entitlement, would not have consented to an invasion of principal prior to the exhaustion of available public funds."

Tutino ex rel. Portela v. Perales, 153 A.D.2d 181, 188, 550 N.Y.S.2d 21 (1990). Given the facts of the present case, including the fact that Livingston was receiving Medicaid benefits well prior to the signing of the indenture and Livingston's medical conditions dating back almost thirty years, it cannot be said that there is evidence of a change of circumstances or need by Livingston that would justify an order contravening the intent of the testator. Defendant's motion for summary judgment is granted.[5] Consistent with the judgment in favor of defendant, plaintiff-intervenor's motion for summary judgment is denied.

IV. CONCLUSION

Defendant's motion for summary judgment (Doc. 44) is **granted**. Plaintiff-intervenor's motion for summary judgment (Doc. 52) is **denied**. The Clerk shall close the file.

SO ORDERED.

Dated at New Haven, Connecticut, November ___, 2002.

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Peter C. Dorsey
United States District Judge

[5] Plaintiff-intervenor's argument that the State has a right and duty to pursue payment by resources available to claimant is inapposite to the present claim. *See Sullivan v. County of Suffolk*, 174 F.3d 282, 285 (2d Cir. 1999) ("Because Congress intended Medicaid to be the 'payor of last resort,' the state agency that administers Medicaid must seek reimbursement from any third party responsible for the patient's medical expenses.") That such a duty exist bears in no way on claimant's entitlement to payments from a trust which, by its terms, is not responsible for medical expenses.